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10/783,939	02/20/2004	Blaise Mattie	GRON-3894	7286
5409 7590 09/15/2008 SCHMEISER, OLSEN & WATTS 22 CENTURY HILL DRIVE SUITE 302 LATHAM, NY 12110			EXAMINER MENDIRATTA, VISHU K	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte BLAISE MATTIE

Appeal 2008-1421
Application 10/783,939
Technology Center 3700

Decided: September 15, 2008

Before DONALD E. ADAMS, DEMETRA J. MILLS, and JEFFREY N.
FREDMAN, *Administrative Patent Judges*.

MILLS, *Administrative Patent Judge*.

DECISION ON APPEAL

This is an appeal under 35 U.S.C. § 134. The Examiner has rejected the claims for obviousness. We have jurisdiction under 35 U.S.C. § 6(b).

The following claims are representative.

1. A board game comprising:
 - a plurality of player markers;
 - a game board having an outer circle, an inner circle, and a center region, wherein said outer circle and inner circle include a plurality of spaces thereon for movement of player markers, and wherein said center region includes a map and district spots that are separate from said plurality of spaces and correlate to locations on said map, said plurality of spaces including:
 - a plurality of equipment spaces, whereby a player obtains an equipment card indicated by a landed-on equipment space;
 - a plurality of task spaces, whereby a player takes a task card at random from a collection thereof upon landing on a task space and attempts to complete a task which is indicated on the task card by turning in a least one equipment card in their possession;
 - random number generating means for determining movement of the player markers about the board; and
 - rank badges which may be obtained by at least one of a player landing on a promotion space of the board and as a result of instructions indicated on a duty card.
3. A board game according to claim 1, wherein the game board further comprises a plurality of district markers, which are separate from said plurality of player markers, for placement on an obtained district to indicate ownership thereof, regardless of whether the district spot was previously owned or not.

Cited Reference

Andrew et al.	US 4,136,879	Jan. 30, 1979
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Grounds of Rejection

1. Claims 1 and 3-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrew.

DISCUSSION

Background

“The present invention relates to a board game and more particularly to a firefighter themed board game.” (Spec. 1.)

1. Claims 1 and 3-22 are rejected under 35 U.S.C. 103(a) as being unpatentable for obviousness over Andrew.

In its most basic form, Claim 1 requires

1. a plurality of markers,
2. a game board,
3. a random number generator, and
4. rank badges.

We find that the plurality of spaces on the game board is considered printed matter on the game board. *See In re Gulack*, 703 F.2d 1381, 1385 (Fed. Cir. 1983) (“Where the printed matter is not functionally related to the substrate, the printed matter will not distinguish the invention from the prior art in terms of patentability”).

The Examiner finds that:

Andrew teaches a game board (Fig. 1), a plurality of markers (Fig.4), a plurality of spaces (A1-A7 etc), start space (11), a plurality of cards (Fig.7-12), random number generator (Fig.3), and badges (Fig. 5). Applicant may note that method steps/rules for playing the game do not further limit the apparatus in the claim.

For example Andrew [sic] game pieces can be used for moving on spaces (rule) as well as for marking obtainable spaces (rule). Applicant might argue that references spaces and cards are not the same as compared to applicant's spaces and cards.

The only difference between applicant's game and the applied reference resides in meaning and information

conveyed by the printed matter and not considered patentable EX. Parte [sic] Breslow 192 USPQ 431. . . .

In order to change the theme of the game, it would have been obvious to change the information on spaces/cards to match the theme of the game. One of ordinary skill in art at the time the invention was made would have suggested modifying the indicia on spaces/cards to promote a game.

(Ans. 3-4.)

We find no error in the Examiner's prima facie case of obviousness. When determining whether a claim is obvious, an Examiner must make "a searching comparison of the claimed invention – *including all its limitations* – with the teaching of the prior art." *In re Ochiai*, 71 F.3d 1565, 1572 (Fed. Cir. 1995) (emphasis added). Thus, "obviousness requires a suggestion of all limitations in a claim." *CFMT, Inc. v. Yieldup Intern. Corp.*, 349 F.3d 1333, 1342 (Fed. Cir. 2003) (citing *In re Royka*, 490 F.2d 981, 985 (CCPA 1974)).

Appellant contends that Andrew does not teach the rank badges of claim 1 (App. Br. 7-10) or the district markers of claim 3 (App. Br. 11).

As to the claimed rank badges, Appellant argues:

The Examiner alleges that Andrew teaches of rank badges and refers to the personnel cards **69** shown in Figure 5 as evidence to support his allegation. It is with due respect submitted that the personnel cards **69** taught by Andrew are quite dissimilar in both structure and function from the **rank badges** taught by the Appellant. For example, a rank badge is an emblem worn as an insignia of rank in an organization. Twenty-eight personnel cards, seven for each of the four specialities are provided in the game taught by Andrew. See Andrew, column 5, lines 8-10. There is nothing to teach or suggest that the personnel cards of Andrew are insignia's to be worn as would a badge.

(*Id.* at 8.)

We are not persuaded by Appellant's argument. According to the *American Heritage® Dictionary of the English Language*, Fourth Edition, 2000, a "badge" is defined as either, "1a. A device or emblem worn as an insignia of rank, office, or membership in an organization. b. An emblem given as an award or honor. 2. A characteristic mark." Thus the definition of badge not only encompasses an emblem which is worn, but also encompasses an emblem given as an award or honor, such as a professional title, and characteristic mark. In view of the above, we agree with the Examiner that the personnel cards of Andrew include different ranks or professional titles, and can be considered rank badges as claimed. Put another way, the claimed rank badges read on Andrew's personnel cards.

Appellant further argues that Andrew's personal cards are neither obtained nor discarded. (App. Br. 9.) Appellant argues that the rank of the player materially affects how the game is played. (*Id.*) The Examiner takes the position that these arguments are related to the method of use of the game and not limiting of the apparatus, and further argues that how an item is used in the game is not a structural limitation towards an apparatus. (Ans. 4.) The Examiner argues that "the only difference between applicant's cards and Andrew's cards reside in meaning and information conveyed by the printed matter and not considered patentable differences" (Ans. 5). We agree with the Examiner that the fact that Andrew's personnel cards are neither obtained nor discarded is of no consequence because such arguments are related to a method of using (*e.g.*, playing) the game and are not structural differences between the claimed components of the game and those of Andrew.

Appellant contends that Andrew does not teach the district markers of claim 3 (App. Br. 11). The “Examiner takes the position that Andrew clearly teaches district markers, see Fig. 4.” (Ans. 4.) We agree with the Examiner’s finding that Andrew discloses as many as eight different types of markers in Fig. 4, for use in the game. Because the district markers claimed are one of a plurality of markers claimed in the present application, and disclosed in Andrew, we are not persuaded by Appellant’s argument.

Appellant has provided no indication of a structural difference between the claimed board game and the board game of Andrew. The obviousness rejection is affirmed.

SUMMARY

The obviousness rejection is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a).

AFFIRMED

cdc

SCHMEISER, OLSEN & WATTS
22 CENTURY HILL DRIVE
SUITE 302
LATHAM NY 12110